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4 Honorable Judge Benjamin Settle
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

28 CLYDE RAY SPENCER,)
29 Plaintiff,) No. C11-5424BHS
30 v.) DECLARATION OF KATHLEEN
31) T. ZELLNER IN SUPPORT OF
32) PLAINTIFF'S RESPONSE TO
33) DEFENDANT PETERS'
34) SUPPLEMENTAL
35) MEMORANDUM
36) NOTE ON MOTION CALENDAR:
37) Monday, July 8, 2013

38 Pursuant to 28 U.S.C. § 1746, Kathleen T. Zellner declares under penalty of perjury
39 under the laws of the State of Washington and the United States of America that the following
40 is true and accurate:

41 1. I am the attorney of record for Plaintiff Clyde Ray Spencer in the above entitled
42 action. I am competent to testify in all respects, and make this declaration from personal
43 knowledge.

44 2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the
45 deposition of James Peters. Specifically, the following pages from the transcript of the
46 deposition are attached: 124, 167-68, 242-43.

47 DECLARATION OF KATHLEEN T. ZELLNER IN SUPPORT
48 OF PLAINTIFF'S RESPONSE TO DEFENDANT PETERS'
49 SUPPLEMENTAL MEMORANDUM
50 (C11-5424BHS) — 1

Kathleen T. Zellner & Associates, P.C.
LAW OFFICES
1901 Butterfield Road
Suite 650
Downers Grove, Illinois 60515
630.955.1212 main · 630.955.1111 fax

1 3. Attached hereto as **Exhibit B** is a true and correct copy of the letter written by James
2 Peters to the Independent Sentencing Review Board, dated June 5, 1998, Bates Nos. Spencer-
3 03946-03947. Exhibit B was produced by Defendant James Peters in response to Plaintiff's
4 requests to produce.

5 4. Attached hereto as **Exhibit C** is a true and correct copy of U.S. Court of Appeals for
6 the Ninth Circuit's memorandum, filed November 30, 1995, affirming in part and reversing in
7 part the lower court's grant of summary judgment to the state and granting Plaintiff an
8 evidentiary hearing in *Spencer v. Klauser*, Case No. 95-35113 (prior habeas proceedings).

9 5. Attached hereto as **Exhibit D** is a true, correct, and signed copy of Petitioner's First
10 Interrogatories and Requests for Production of Documents and Respondent's Answers to
11 Petitioner's First Interrogatories and Requests for Production of Documents in *Spencer v.*
12 *Klauser*, Case No. C94-5223RJB (prior habeas proceedings), Bates Nos. Spencer001695-
13 001717.

14 6. Attached hereto as **Exhibit E** is a true, correct, and signed copy of the Notice of
15 Deposition to James Peters, dated July 11, 1996, in *Spencer v. Klauser*, Case No. C94-523RJB
16 (prior habeas proceedings).

17 7. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from the
18 deposition of James Peters, taken July 30, 1996, in the matter of *Clyde Raymond Spencer v.*
19 *Joseph Klauser, et al.*, Case No. C94-5238RJB (prior habeas proceedings). Specifically, the
20 following pages from the transcript of the deposition are attached: 28.

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27 DECLARATION OF KATHLEEN T. ZELLNER IN SUPPORT
 OF PLAINTIFF'S RESPONSE TO DEFENDANT PETERS'
 SUPPLEMENTAL MEMORANDUM
(C11-5424BHS) — 2

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2 SIGNED this 1st day of July, 2013 in Downers Grove, Illinois.
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5 Respectfully submitted,
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8 /s/ Kathleen T. Zellner
9 Kathleen T. Zellner & Associates, P.C.
10 Admitted *pro hac vice*
11 1901 Butterfield Road
12 Suite 650
13 Downers Grove, Illinois 60515
14 Phone: (630) 955-1212
15 Fax: (630) 955-1111
16 kathleen.zellner@gmail.com
17 Attorney for Plaintiffs
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28 DECLARATION OF KATHLEEN T. ZELLNER IN SUPPORT
29 OF PLAINTIFF'S RESPONSE TO DEFENDANT PETERS'
30 SUPPLEMENTAL MEMORANDUM
(C11-5424BHS) — 3

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DECLARATION OF SERVICE

I hereby certify that on July 1, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record as follows:

| | | |
|---|---|---|
| 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 | Patricia Campbell Fetterly Daniel J. Judge Robert M. McKenna Assistant Attorney General Torts Division PO Box 40126 Olympia, WA 98504-0116 Email: patriciaf1@atg.wa.gov Attorneys for Defendant James M. Peters | |
| | Guy Bogdanovich Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. P.O. Box 11880 Olympia, WA 98508-1880 Email: gbogdanovich@lldkb.com Attorney for Defendant Sharon Krause | Jeffrey A. O. Freimund Freimund Jackson Tardif & Benedict Garratt, PLLC 711 Capitol Way South, Suite 602 Olympia, WA 98502 Email: jeffF@fjtlaw.com Attorneys for Defendant Michael Davidson |

/s/ Kathleen T. Zellner

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Attorney for Plaintiffs

DECLARATION OF KATHLEEN T. ZELLNER IN SUPPORT
OF PLAINTIFF'S RESPONSE TO DEFENDANT PETERS'
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(C11-5424BHS) — 4

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